Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No.17-84

COMMENTS OF CALTEL

Pursuant to the Commission's Public Notice establishing dates for comments on the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (NPRM/NOI/RCF) issued in this proceeding,[1] the California Association of Competitive Telecommunications Companies[2] ("CALTEL") files the following comments on behalf of its members.[3]

I. Introduction and Summary

CALTEL is a non-profit trade association that represents the interests of its members before the California Public Utilities Commission (CPUC), the California State Legislature, and the California Governor's Office. CALTEL participates in Commission

[1] *Wireline Competition Bureau Announces Deadlines for Filing Comments and Reply Comments in the Wireline Infrastructure Proceeding,* WC Docket No. 17-84, Public Notice DA 17-473, May 16, 2017.

[2] CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice and broadband services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

[3] *See* www.caltel.org for a list of CALTEL member companies.

proceedings, especially where there is an opportunity and/or need to provide input specific to the communications services market in California.

CALTEL will address issues in the NPRM and NOI which most directly affect competitive carriers operating in California. For example, because California is a reverse-preemption state for regulations of access to poles, conduits and rights-of-way, limited input is provided on Section A (Pole Attachment Reforms) of the NPRM.

With regard to Section B of the NPRM (Expediting the Copper Retirement and Network Change Notification Process), CALTEL focuses on Issue 1 dealing with proposed changes to the copper retirement rules. In summary, CALTEL supports streamlining the copper retirement processes and timelines for the majority of notices, *i.e.* for those cases where no interconnecting provider is leasing the affected facilities to provide service to end user customers. In cases where a competitive carrier *is* impacted by a planned retirement, CALTEL believes that, except in emergency situations, actual ILEC planning cycles are in the 12-18 month range and that the current 6-month notice timeframe will not delay broadband deployment. The Commission should therefore retain the current notice period for this situation.

With regard to Section C of the NPRM (Streamlining the Section 214a Discontinuance Process), CALTEL addresses only Issue 3 dealing with proposed changes to how carrier-customers' end users are treated under the current Section 214(a) rules. First, CALTEL explains that with regard to the wholesale services identified in the Commission's 2015 Tech Transitions order (i.e. special access services and wholesale platform services), ILECs have certain knowledge about the identity and location of its wholesale customer's end users. Nonetheless, CALTEL agrees that the Commission's

rules with regard to the interplay between the requirements of Section 251(c)(5) and Section 214(a) of the Act need clarification, but cautions against reversing current Section 214(a) rules without replacing them with other protections for end-user customers.

With regard to the NOI, CALTEL provides in Section A (Prohibiting State and Local Laws Inhibiting Broadband Deployment) examples of California Public Utilities Commission (CPUC) regulations and local ordinances that hinder competition and create barriers to broadband deployment. Finally, with regard to Section B (Preemption of State Laws Governing Copper Retirement), CALTEL explains why the Commission need not preempt the CPUC's copper retirement rules (such as they are) nor interfere with state requirements regarding retail service quality.

II. Discussion

A. Comments on Section A of the NPRM (Pole Attachment Reforms)

State commissions are permitted to reverse pre-empt the Commission's regulations for access to poles, conduits and rights-of-way if they meet certain federal standards. Twenty states, including California, exercised this reverse-preemption right.

The CPUC adopted fairly comprehensive regulations governing the rates, terms and conditions for pole and conduit attachments in 1998, and has in recent years opened proceedings to address safety issues and to extend attachment rights to CMRS providers. This latter proceeding adopted per-foot vs. per-pole rates for wireless pole attachments,[4]

[4] CPUC Decision D.16-01-046, Decision Regarding the Applicability of the Commission's Right-of-Way Rules to Commercial Mobile Radio Service Carriers, R. 14-05-001, issued February 1, 2016.

and the CPUC is now conducting a proceeding to determine if and how to extend those rates to the wireless pole attachments of competitive LECs CLECs).[5]

In other respects, such as adopting definitive timelines for utilities to act on pole attachment requests, CPUC regulations have fallen behind Commission rules, let alone the additional streamlining proposed in the NPRM. In recent months, the CPUC has issued data requests and conducted a workshop focusing on development of a statewide pole and conduit inventory, and has also committed to opening a comprehensive generic rulemaking in the near future.[6] CALTEL hopes this proceeding will result in updated regulations that significantly speed CLEC access to poles and conduits while balancing the legitimate needs and interests of all parties and of the public.

B. Comments on Section B of the NPRM (Expediting the Copper Retirement and Network Change Notification Process)

In Section B of the NPRM, the Commission "propose(s) revisions to our Part 51 network change disclosure rules to allow providers greater flexibility in the copper retirement process and to reduce associated regulatory burdens, to facilitate more rapid

[5] CPUC Rulemaking R.17-03-009, Order Instituting Rulemaking Proceeding to Consider Amendments to the Revised Right-of-Way Rules Adopted by Decision 16-01-046, issued April 3, 2017.

[6] CPUC Decision D.16-12-025, Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market, I.15-11-007, issued December 8, 2016. "Within nine months of this order, the Commission shall institute a Rulemaking to examine telecommunications access to poles, conduit, and rights of way. Ordering Paragraph 5, p. 193 *See also* Notice of March 17, 2017 Workshop re: Pole and Conduit Databases and Applications in California at http://www.cpuc.ca.gov/calEvent.aspx?id=6442452792 .

deployment of next-generation networks."[7] This section also addresses changes to other Part 51 rules, but CALTEL's comments are limited to the first issue.

The general tone of this section of the NPRM is captured in the following statement: "We anticipate that interconnecting carriers are aware that copper retirements are inevitable and that they should be familiar by now with the implications of and processes involved in accommodating such changes."[8] CALTEL contends that this assertion reflects the overblown rhetoric of the ILECs' regulatory advocacy, and not operational facts. ILECs and CLECs alike are deploying fiber more extensively and expeditiously than ever, but fiber is still expensive and time-consuming to deploy and unlikely to ever be ubiquitous. In the meantime, while last-mile copper loops continue to be maligned as outdated or obsolete, they are an essential component of the cost-effective, high-quality broadband services that both ILECs and CLECs provide. Technological advances such as Ethernet over copper (EoC) are now common, and allow carrier to bond together multiple slower-speed copper circuits into a high-speed link that allow carriers to deliver integrated voice-and-broadband services over the existing copper infrastructure at speeds of up to 45Mbps.

The history and experience of CALTEL member company Sonic Telecom provides a constructive example of the continuing utility of copper directly as a broadband facility and as a transition to fiber. As documented in a declaration filed in

[7] NPRM/NOI/RCF at ¶ 56.

[8] NPRM/NOI/RCF at ¶ 62.

another Commission proceeding,[9] Sonic expanded its independent ISP business in 2007 to apply for a Certificate of Public Necessity and Convenience (CPCN) from the CPUC to form a new CLEC entity that could offer voice and broadband service to residential and business customers. Sonic then negotiated a Section 252 interconnection agreement with AT&T, and deployed colocation equipment in a number of central offices to lease unbundled copper loops from AT&T and combine them with other components of its network and back office systems. Sonic's offer of a $40-$50 per month unlimited Internet and home phone bundle to residential customers in a number of communities over copper facilities across Northern and Southern California has been very successful, and in 2012, Sonic had sufficiently grown its customer base to begin trialing a gigabit fiber-to-the-premise (FTTP) product using self-deployed fiber loops. Following trials in Sebastopol and Brentwood, Sonic began deploying its FTTP product in the Sunset, Richmond and Parkside districts of San Francisco last year at the same $40-$50 price point. Sonic plans to deploy fiber in several other Bay Area municipalities next year, and reports that approximately 20% of its current customer base is served over fiber.

For Sonic and other California CLECs, the on-the-ground facts do not support a view that copper retirement notices an everyday occurrence, let alone inevitable. CALTEL is simply unable to answer many of the questions in the NPRM because to-date, CALTEL is aware of no copper retirement notices that have been filed by either AT&T or Frontier that have affected CLEC end-users in California. Since January 1,

[9] Comments of CALTEL and Declaration of Dane Jasper, *In the Matter of Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, MB Docket No.17-91, filed May 18, 2017.

2016, AT&T and Frontier have filed one retirement notice each for California.[10] CALTEL assumes this is because copper facilities remain used and useful to the ILECs, either to serve their own retail customers or as a source of desirable wholesale revenue. In the face of these facts, it is difficult to believe that the Commission's (or the CPUC's) copper retirement rules present any real barrier to fiber deployment.

Nonetheless, CALTEL supports streamlining of those rules for those retirement notices where the ILEC has identified that the facilities ***are not*** leased by a wholesale customer. In these cases, which as far as CALTEL is aware comprise all the retirement notices filed for California to-date, CLECs do not need 180 days' notice.

Where CLECs are using the facilities, except in emergency situations, the Commission should retain the 180-day timeframe. This timeframe was a fair trade-off for eliminating the opportunity for interconnecting carriers to object to a retirement notice, and focuses the energies of the CLEC on making alternative arrangements to serve affected end user customers if possible. Moreover, CALTEL believes that ILEC planning cycles for fiber deployment are likely in the 12-18 months window, and that six months' notice to interconnecting carriers, especially if limited to only those notices where the facilities are being leased, provides no significant hardship or delays in fiber deployment.

[10] *See* Wireline Competition Bureau Copper Retirement Network Change Notification filed by Pacific Bell Telephone Company d/b/a AT&T California, Report No. NCD-2665, filed March 3, 2017 and Wireline Competition Bureau Copper Retirement Network Change Notification filed by Frontier Communications, Report No. NCD-2534, filed March 21, 2016.

The Commission also seeks information about CLECs' experience with the rules, including the good faith communication requirement, but CALTEL cannot provide any meaningful analysis given the small number of retirement notices.

The Commission asks whether the expanded definition of copper retirement adopted in the 2015 Technology Transitions Order[11] should be retained. With regard to notices where CLECs are leasing facilities, retirement of the feeder portion of the loop or sub-loop triggers the same need to make alternative last-mile arrangements as does retirement of the distribution portion, and therefore needs to be noticed.

As for *de facto* retirement, as discussed in Section E below, the CPUC's service quality regulations are the CLECs' best defense against this problem. Wholesale performance measures and penalty plans contained in Section 252 Interconnection Agreements should theoretically protect CLECs from inadequate loop facilities and long repair times, but wholesale performance measures that rely on receiving parity with retail performance are of little value when the ILEC is willing to provide consistently poor performance to its own customers. As the NPRM confirms, "maintenance of existing copper facilities remains a concern when an incumbent LEC does not go through the copper retirement process."[12]

However, CALTEL acknowledges that deferred maintenance and degraded plant is difficult to translate into substantive and enforceable rules. Underlying root causes are complex, and problems are often not detected until there is a significant weather-related

[11] Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, *In the Matter of Technology Transitions et al*, GN Docket No. 13-5 et al, released August 7, 2015 (2015 Technology Transitions Order).

[12] NPRM/NOI/RCF at ¶ 60.

event. But while *de facto* copper retirement for individual loops may be generally difficult to detect or confirm, surely ILEC policy decisions that discontinue maintenance for targeted wire centers, or for so-called "chronic" loops, cross a bright line and should be noticed before copper loops have been entirely transitioned to fiber. CALTEL therefore recommends retaining the current copper retirement definition.

C. Comments on Section C of the NPRM (Streamlining the Section 214a Discontinuance Process)

In Section C of the NPRM, the Commission "seek(s) comment on targeted measures to shorten timeframes and eliminate unnecessary process encumbrances that force carriers to maintain legacy services they seek to discontinue."[13] The third issue in this section, entitled "Clarifying Treatment Under Section 214(a) of Carrier-Customers End Users," seeks comment on "reversing" the Commission's determinations in the 2015 Technology Transitions Order with regard to how Section 214(a) applies to wholesale services.[14]

First, the Technology Transitions Order in effect limits these determinations to two types of wholesale inputs: special access services (purchased subject to public tariffs and/or filed contracts) and wholesale platform services (purchased subject to private commercial agreements).[15] Although the Commission continues to ask what a wholesale provider can "be expected to know about who the end-user customers of its carrier-

[13] NPRM/NOI/RCF at ¶ 71.

[14] NPRM/NOI/RCF at ¶¶ 90-94.

[15] *See* Technology Transitions Order at ¶ 19, fn. 70 and ¶ 117.

customers are and how the discontinuance will affect them,"[16] it seems clear to CALTEL that, at least with regard to these two wholesale inputs, the wholesale provider has certain knowledge about the names, locations and number of lines of its carrier-customer's end-user customers. The only information it does not have is if the carrier-customer will be able to make alternative arrangements to continue providing service to those end-user customers.

That said, CALTEL agrees that the Commission's rules regarding the interplay between the requirements of Section 251(c)(5) and Section 214(a) as they pertain to these wholesale services in need of clarification. Using wholesale platform services as an example, if an ILEC decides to discontinue these services, then tens of thousands of small and medium business end-user customer locations in California will be affected. CALTEL member companies that rely on commercial agreements for wholesale platform services from AT&T and Frontier need sufficient notice that those services are being discontinued to determine if alternate service arrangements are possible and to comply with state and federal customer notice requirements. But because the termination timeframes are governed by private commercial agreements in which the CLEC has little to no bargaining power, it is unclear whether they are sufficient to allow carrier-customers to comply with their Section 214(a) obligations. CALTEL cautions the Commission against relying on carrier-customers to ensure that these terms and conditions are sufficient given the ILECs' "take it or leave it" approach to commercial agreements.

[16] NPRM/NOI/RCF at ¶ 91.

Therefore, the Commission should not reverse its determination that Section 214(a) applies to these wholesale platform services unless two other process changes are adopted. The first is a further modification to Rule 63.71 that would make a CLEC's application for discontinuance deemed granted on the effective date of the discontinuance of *any* underlying wholesale input. In the Order on Reconsideration of the Technology Transitions Order, the Commission revised this rule based on a Petition for Reconsideration filed by CALTEL member company TelePacific Communications (now TPx Communications) to account for discontinuances caused by copper retirements.[17] This relief was conditioned on submission of an application at least 40 days prior to the planned retirement, which was based on a known notice period of 180 days.[18] Since the termination notice period in the commercial agreements for wholesale platform services is not known, CALTEL is unable to make a recommendation regarding how the 214(a) shot-clock should be established for these services. But the same policy determination applies: CLECs should not be "vulnerable for violating our discontinuance rules for reasons entirely outside of their control."[19]

Second, if the Commission reverses its interpretations regarding the application of Section 214(a) to wholesale platform services, it must identify what process applies for protecting end user customers being served over these wholesale inputs. AT&T has suggested, and the Commission has apparently endorsed, a view that wholesale platform

[17] Declaratory Ruling, Second Report and Order, and Order on Reconsideration, *In the Matter of Technology Transitions et al,* GN Docket No. 13-5 et al, released July 15, 2016, at ¶¶ 195-205.

[18] *Id.* at ¶¶ 202-204.

[19] *Id.* at ¶ 195.

services are local and intrastate in nature.[20] But the implications of this view are unclear at best. If the Commission intends for state commissions to be responsible for some aspect of this notice and transition process, then such a finding must be communicated and handed off so that relevant state regulations can be modified. For example, the CPUC has regulations that address discontinuances of wholesale services as well as extensive guidelines regarding involuntary CLEC market exits which impose requirements on both the CLEC and the underlying wholesale provider to protect end user customers from service interruptions.[21]

D. Comments on Section A of the NOI (Prohibiting State and Local Laws Inhibiting Broadband Development)

In Section A of the NOI, the Commission "seek(s) comment on whether (to) enact rules, consistent with (its) authority under Section 253 of the Act, to promote the deployment of broadband infrastructure by preempting state and local laws that inhibit

[20] *See* Letter from Frank S. Simone, V.P. Federal Regulatory, AT&T Services Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No 13-5 et al, filed July 31, 2015; Brief for Petitioner US Telecom, *United States Telecom Association vs. FCC,* No. 15-1414, pp. 52, 75, dated June 14, 2016; and Report and Order, *In the Matter of Business Data Services in an Internet Protocol Environment et al*, WC Docket No. 16-143 et al, released April 28, 2017, at ¶ 288, fn 736: "Insofar as TDM UNE-P replacement services are neither interstate services nor composed of only unbundled network elements that meet section 251's impairment test, the Act does not grant us affirmative authority to regulate them. And insofar as TDM UNE-P replacement services are intrastate, local services, it appears the Act affirmatively strips us of authority to regulate them." *See also* Declaratory Ruling, Second Report and Order, and Order on Reconsideration, *In the Matter of Technology Transitions et al*, GN Docket No. 13-5 et al, released July 15, 2016, at ¶ 52.

[21] *See* CPUC General Order 96-B, Rules for Filing and Publishing Tariffs for Gas, Electric, Telephone, Telegraph, Water and Heat Utilities, at http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/164747.htm and CPUC Decision D.10-07-024, Decision Adopting Guidelines for Competitive Local Exchange Carriers (CLEC) Involuntary Exits and Principles and Procedures for CLEC End-User Migrations and Modifying the Mass Migration Guidelines, R.03-06-020, issued August 4, 2010.

broadband deployment."[22] CALTEL does not hold the view that California state and local laws and regulations have created barriers to broadband development—to the contrary, over the years the CPUC and local municipalities have adopted many regulations that have protected and promoted competition.[23] But unfortunately there are also examples of glaring exceptions that do not meet the requirements of Section 253(b) and that are candidates for preemption.

1. State Laws and Regulations

The CPUC's failure to open the territories of the California rural LECs (RLECs) to wireline competition is the most frustrating. More than 20 years following passage of the Act, CALTEL is aware of no other state that bars wireline--but not wireless--providers from competing in RLEC territories, especially without even requiring those RLECs to request the rural exemptions that are available to them under federal law. As CALTEL has explained in its rehearing application of the CPUC's 2014 decision adopting a "preliminary" conclusion that further delay was warranted, extending the

[22] NPRM/NOI/RCF at ¶ 100.

[23] *See, e.g.*, CPUC Decision D.16-12-025, Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market, I.15-11-007, issued December 8, 2016 and Ordinance 250-16 of the City and County of San Francisco, *Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement*, passed by the San Francisco Board of Supervisors on December 13, 2016 and signed by Mayor Ed Lee on December 22, 2016 at http://sfbos.org/sites/default/files/o0250-16.pdf .

status quo interferes with the operation of federal law and is the type of state moratoria that the Commission has requested comment on, and is ripe for preemption.[24]

This barrier arises out of the CPUC's requirement that CLECs obtain a Certificate of Public Convenience and Necessity (CPCN) before providing local service to customers in California. In the first decision of the CPUC's Local Competition proceedings, D.95-07-054, it opened the territories of the large ILECs (Pacific Bell, now AT&T California, and GTEC, now Verizon California) to competition by first adopting rules governing requests for CPCN authority, including an opportunity to participate in expedited batch processing of CPCN requests. In D.97-09-115, the CPUC opened the territories of the mid-sized ILECs (Roseville Telephone Company, later SureWest, now Consolidated, and Citizens Telephone Company, now Frontier) to competition in the same manner. The CPUC instructed CLECs that wished to expand their current CPCNs to identify whether they planned to serve the territory of Roseville Telephone, Citizens, or both, and the Commission provided another expedited batch process opportunity for handling of those requests. However, because the market-opening provisions of Section 251 differ for rural LECs in comparison with the large and mid-sized ILECs, the CPUC's 1995 and 1997 orders deferred the issue of whether to open RLEC territories to competition, noting the exemptions that apply to RLECs under Section 251(f) of the Act.

Despite extensive briefing by CALTEL and the California cable association, the CPUC determined in December, 2014 to further delay wireline market entry:

> Any request filed and received subsequent to this Phase I decision to amend CPCNs to include Small ILEC areas or for

[24] CALTEL Application for Rehearing of D.14-12-084, R.11-11-007, dated January 20, 2015 (CALTEL Rehearing Application).

> access to Section 251(b) elements or interconnection under Section 251(c), or for a petition under Section 251(f)(2) to suspend or modify the application of the requirements of Section 251(b) or (c), or a petition under Section 253(f) will be deferred until the Broadband Networks and Universal Service studies are completed in Phase 2 of this proceeding and the Commission has evaluated the study to determine in Phase 2 whether or not some or all of the Small ILEC areas should be opened to CLEC competition.[25]

First, as CALTEL has explained, but the CPUC has repeatedly ignored, these purported studies and many other considerations described at length in the CPUC's decision are irrelevant to the question of whether federal law requires RLECs to provide access to the service elements found in Sections 251(a) and (b) despite the rural exemption afforded to them in Section 251(f)(1):

> We clarify that LECs are obligated to fulfill all of the duties set forth in sections 251(a) and (b) of the Act, including the duty to interconnect and exchange traffic, even if the LEC has a rural exemption from the obligations set forth in section 251(c).26

CALTEL went on to explain that:

> The factors which the Commission proposes to examine in its twenty-one-month study have no lawful bearing at all on whether the RLECs have an obligation to provide Section 251(a) and (b) service elements to CLECs. There is nothing in federal law which limits competition using these service elements based on the extent of existing competition or the extent of broadband deployment...Therefore, the study is not only a red herring, the completion of which has no bearing on the Commission's obligation to issue CPCNs permitting competition in RLEC service areas, it is itself a Section 251(f)(2) de facto blanket

[25] D.14-12-084, Decision Adopting Rules and Regulations in Phase 1 of the Rulemaking for the California High Cost Fund-A Program, issued December 19, 2014, at Ordering Paragraph 7, pp. 101-102.

[26] Declaratory Ruling, *In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable, Inc. for Preemption Pursuant to Section 253 of the Communications Act et al,* WC Docket No. 10-143, released May 26, 2011, at ¶ 2.

> exemption to all of the RLECs that relieves them of their Section 251(b) obligations for at least an additional two years.[27]

Various state commissions have considered petitions for relief under Section 251(f)(2), but to CALTEL's knowledge, none has granted relief on the basis of generalized claims that competitive entry would be economically burdensome and/or inconsistent with universal service goals. Instead, because of the potentially harmful impact on a competitive market, this exemption is expressly meant to be limited as to extent and duration, and is subject to a higher bar. In contrast, here the CPUC has extended a twenty-plus year moratorium that unlawfully relieves all the California RLECs from meeting their Section 251(a) and (b) obligations and prolongs their continued insulation from competition by wireline CLECs. It is especially troubling that the RLECs continue to enjoy insulation from competition without having had to file or defend individual petitions for suspension or modification.

The Commission should determine that the CPUC's unwarranted delay in permitting CLECs to file CPCN amendments is a de facto blanket 251(f)(2) grant of suspension that is contrary to the processes and objectives outlined in federal law and that disregards the competitive balance that underlies the statute. As it did when it preempted another state commission that erected similar barriers, the Commission should find that preemption of the CPUC's 2014 decision "advances the larger goals of the Communications Act,…that one of the principal objectives of the 1996 Act is opening local exchange and exchange access markets to competition,…(and that) in this instance,

[27] CALTEL Rehearing Application at p. 9.

potential competition enabled by interconnection has been denied to consumers in these markets though inaction."[28]

2. Local Laws and Regulations

Local permitting requirements and timelines vary significantly across California, and facility-based CLECs encounter unique challenges and barriers when attempting to navigate these processes, especially for the first time.

Sonic Telecom learned this first-hand when it began deploying fiber in San Francisco. It encountered costly and time-consuming conditions, especially in connection with obtaining excavation permits for surface-mounted facilities (utility boxes). Those requirements include extensive landscaping requirements and an "in-lieu" payment of $7,500 where the city determines that the site is "inappropriate for a street tree and landscaping."[29] Service providers also are required to work with local artists to paint murals on the utility boxes at a cost of $15,000 (reduced to $7,500 for multiple utility boxes), and to remove graffiti within 72 hours.[30]

Legislation was recently introduced to reduce the in-lieu landscaping fee to $1,489 and to create an in-lieu payment of $500 for the mural requirement.[31] San

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[28] Memorandum and Order, *In the Matter of Petition of Time Warner Cable Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the North Carolina Rural Electrification Authority Regarding Arbitration of an Interconnection Agreement with Star Telephone Membership Corporation*, WC Docket No. 13-204, released November 1, 2013, at ¶ 16.

[29] Public Works Code, Article 27: Surface-Mounted Facilities, at http://www.sfbeautiful.org/PDF/Surface-Mounted%20Facility%20Site%20Permits.pdf

[30] *Id.*

[31] Proposed Ordinance Amending the Public Works Code, Article 27, File No. 170442, at https://sfgov.legistar.com/Legislation.aspx .

Francisco also has new pro-competitive legislation pending that would permit micro-trenching.[32]

Across the bay in Berkeley, Sonic has learned that most of the streets it needs to access are impacted by local moratoria. For those streets where permits will be granted, it must furnish door-hangers for each building that is within 500 feet of right-of-way, and provide the city with photographs of each individual door-hanger, even though it anticipates that the work in front of each city block will only take on average 60 minutes.

CALTEL believes that the development of recommendations and best practices by the Broadband Deployment Advisory Council (BDAC) is probably the most effective and efficient way to surface and resolve concerns about unreasonable terms and conditions, including local moratoria. CALTEL stands ready to provide additional information about these examples to BDAC members once a process for doing so is established.

E. Comments on Section B of the NOI (Preemption of State Laws Governing Copper Retirement)

In Section B of the NOI, the Commission asks if there are "state laws governing the maintenance or retirement of copper facilities that serve as a barrier to deploying next-generation technologies and services that the Commission might seek to preempt."[33]

[32] Proposed Ordinance Amending the Public Works Code, Article 2.4: Excavation in the Public Right-of-Way, at https://sfgov.legistar.com/Legislation.aspx

[33] NPRM/NOI/RCF at ¶ 113.

First, with regard to retail service quality, California law requires *all* public utilities to furnish and maintain equipment and facilities in order to provide safe and reliable service:

> Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.[34]

Specific to telecommunications, the CPUC has adopted a General Order (G.O. 133-D) that requires carriers to report results pursuant to a set of service quality measures.[35] The most recent update to this General Order revised the rules and adopted an automatic mechanism for fines that went into effect earlier this year.

While CALTEL does not agree with all aspects of the CPUC's service quality determinations, and in fact has a rehearing application pending on the recently-adopted fines mechanism, the rules are competitively neutral with regard to non-VoIP wireline services. Reporting for most business customers (*i.e.* those with more than 5 lines) is exempted for all providers, and the maintenance measures apply across the board to the non-VoIP services of ILECs and CLECs alike.

Although these rules are admittedly burdensome for CLECs that provide non-VoIP voice services to residential and very small business customers, CALTEL supported adoption of the measures and the new fine mechanism because they are the

[34] California Public Utilities Code Section 451.

[35] *See* General Order 133-D, Rules Governing Telecommunications Services (Service Quality) at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Proceedings/Proceedings_Rules/GO133D.pdf .

best line of defense against an ILEC's *de facto* retirement of copper facilities. The CPUC's Order Instituting Rulemaking (OIR) that opened the most recent proceeding specifically recognized CALTEL's description of the nexus between retail and wholesale service quality, and the impact of poor performance by AT&T and Verizon (now Frontier) on competitive carriers, and on competition:

> …since CLECs rely on copper facilities owned by URF ILECs, deteriorating facilities and extended out-of-service repair times negatively impact customer choice by increasing costs of CLECs through compensating customers to restore confidence in their service. If this confidence cannot be restored, it creates an anti-competitive environment by removing CLECs as a viable alternative to the URF ILECs.[36]

CALTEL therefore does not support pre-emption of either the California state statute or the CPUC's retail service quality regulations.

Second, with regard to copper retirement, the CPUC adopted state-specific copper retirement rules in 2008 in response to a CALTEL Petition for Rulemaking.[37] These rules have not been updated, and as a result are somewhat out of synch with the Commission's current rules. For example, copper feeder is excluded from the CPUC's rules and the rules refer to the pre-2015 notice timeframes, including the now-obsolete objection process.

The CPUC's rules, such as they are, do not create extensive additional obligations on AT&T and Frontier. Other than requiring concurrent notice to the CPUC and to all interconnecting carriers of planned retirements, the rules also outline a good-faith 60-day

[36] CPUC Order Instituting Rulemaking, R.11-12-001, issued December 12, 2011, at p. 11.

[37] CPUC Decision D.08-11-033, Decision Adopting Process Governing Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services, issued November 13, 2008.

negotiations process that is not that different from the Commission's good faith negotiations requirements:

> c. Any CLEC that seeks to use that copper loop facility shall provide to the incumbent carrier within 20 days of the FCC notice a request for negotiations in writing either to purchase or lease the loop facilities and file a copy of its request with the Communications Division. The CLEC shall include in its request for negotiations the following information:
>
> i) Whether the CLEC seeks to purchase the copper loop facility, or whether the CLEC seeks only to have the ILEC maintain access to a loop facility;
> ii) the number of current or planned customers on the copper loop;
> iii) the services that the CLEC provides over the loop facility or plans to provide over the loop;
> iv) the number of UNEs that the CLEC currently purchases
>
> d. Upon receipt of the CLEC's request for negotiations, the ILEC shall negotiate in good faith with the CLEC for a period of 60 days either to:
>
> i) sell the copper loop facility to the CLEC; or
> ii) reach a fair and equitable agreement with the CLEC on price and terms to ensure access to loop facilities.[38]

As noted previously, since CALTEL is not aware of any copper retirement notices that have directly impacted a California CLEC this negotiations process has not actually been tested, let alone created a barrier to ILEC deployment plans. CALTEL looks forward to AT&T and Frontier comments on this issue, but at this point there does not appear to be any compelling reason to pre-empt the CPUC's copper retirement rules.

III. Conclusion

CALTEL welcomes this opportunity to provide input on five of the key issues, and related questions, in the Commission's Wireline Infrastructure NPRM/NOI/RCF.

[38] *Id*. at Ordering Paragraph 4, pp. 42-43.

CALTEL offers the recommendations outlined above to assist the Commission in achieving its objective of "accelerat(ing) the deployment of next-generation networks and services by removing barriers to infrastructure investment"[39] in a way that also protects and promotes competition and consumer choice for critical communications services like high-speed broadband.

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Respectfully submitted,

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[39] NPRM/NOI/RCF at ¶ 1.